

# JUDICIAL COUNCIL MEETING

**Minutes**  
**Monday, April 23<sup>rd</sup>, 2007**  
**Tooele Courthouse**

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*Chief Justice Christine Durham, Presiding*

**ATTENDEES:**

Chief Justice Christine Durham  
Hon. James Davis  
Hon. Ronald Nehring  
Hon. Gary D. Stott  
Hon. Michael D. Lyon  
Hon. Robert Hilder  
Hon. Mark Andrus  
Hon. William Barrett  
Hon. Michael Kwan  
Scott Sabey, esq.  
Hon. Hans Chamberlain  
Hon. Jody Petry  
Hon. Kevin Nelson  
Hon. Rand Beacham

**STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Rick Schwermer  
Rob Parkes  
Ray Wahl  
Holly Frischknecht  
Brent Johnson  
Debra Moore  
Gordon Bissegger  
Matty Branch  
Nancy Volmer

**GUESTS:**

Dave Walsh, CCJJ

**1. WELCOME AND APPROVAL OF MINUTES:**

Chief Justice Durham welcomed everyone and thanked them for coming to Tooele for the Council meeting.

**Motion:** Judge Petry motioned to approve the minutes, the motion was seconded and passed unanimously.

**2. CHAIR'S REPORT: (Chief Justice Christine Durham)**

Chief Justice Durham reported the following:

- The Hinckley Institute of Politics sponsored a panel on youth courts in conjunction with Law Day two weeks ago. Chief Justice Durham moderated the panel. University of Utah faculty, students involved in youth courts, and Juvenile Court Administrator Ray Wahl participated on the panel.
- The 4<sup>th</sup> District Nominating Commission has met and selected five names to be sent to the Governor. He will make his selection by May 5<sup>th</sup>.

- The new 3<sup>rd</sup> District Nominating Commission will meet next week to review the applicants for the vacancy in the Juvenile Court.
- Scott Daniels, Bob Yeates and the Chief have met about the possibility of presenting a session at the State Bar Conference on Judicial Selection.
- The Presiding Judge and combined TCE annual meeting was held earlier this month and was very successful. The program focused on leadership and also included a judges and media workshop. Representatives from all major media outlets attended and participated in a role reversal mock trial and discussion on the press coverage of the courts.
- The Annual Dialogue on Democracy will be in October and Lee Hamilton, former chair of the Iraq Study Committee, will be the presenter at that meeting.
- The Juvenile Court Judges Conference was held last week in Moab. The educational sessions were extremely valuable.

### **3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported the following:

- Debra Moore was introduced to the Judicial Council as the new District Court Administrator. Ms. Moore is a past member of the Judicial Council, past President of the Utah State Bar and comes from the AG's Office as section chief of the appeals department.
- Kristin Brewer, the Director of the GAL Office, has accepted a job with the state of Washington's AG's Office. Ms. Brewer has seen the GAL program grow and develop throughout the past 13 years as the first executive director of the office. By statute, the Council selects the Director of the GAL Office. Mr. Becker proposed that the GAL Oversight Committee be used as a screening body to select three names to consider. Mr. Becker will then interview those candidates and make a hiring recommendation to the Judicial Council.
- During the Warren Jeff's trial a photographer took a photo of the note Mr. Jeffs was attempting to privately pass to the judge. The note was folded and required digital help to determine its contents. Mr. Becker indicated that this type of processing potentially violates attorney client privilege and forces the judiciary to discuss what precautions need to be taken when the media has access to such technology. Mr. Becker sent a letter to the attorney's representing the major media outlets in the state asking that they advise their clients to police themselves so that the courts will not have to limit the media access to the courtroom. Since that time, Mr. Brian Barnard has sent a letter to the Judicial Council requesting they reconsider the rule and that camera's should not be allowed in the courtroom any longer based on the violation at the Jeff's trial. The Judicial Council discussed possible options when dealing with the media's advancing technology. The Policy and Planning Committee will review this issue and consider the Rule.
- Both the Juvenile and District Court Boards requested that the Council consider the salaries of clerical positions during the August Budget and Planning Meeting. The clerks will receive a pay increase this year, but that doesn't address the larger issue that the knowledge, skills, and abilities that are now required for a clerk position may be different than those that were needed in the past. Mr. Becker indicated that the Management Committee decided that a comprehensive study of the clerk position should be done to

help determine the following: what skills are needed in the coming years; the length of time the average clerk will stay with the courts; the relevance of the career ladder; and, the changing interaction the public will have with clerks given the broader use of the internet. After these questions are addressed, the issue of compensation could be further discussed. The committee would include current clerks with varying experience and a consultant could also be hired.

-Chief Justice Durham, Judge Stott, and Judge Chamberlain have been selected to serve on the Task Force on Judicial Selection. The other members can be found at:

<http://le.utah.gov/asp/interim/Commit.asp?Year=2007&Com=TSKJRE>

-Diane Cowdrey was recognized by the National Center for State Courts with the Distinguished Service Award for her work on judicial education both nationally and throughout Utah.

#### **4. REPORTS:**

##### **MANAGEMENT: (Chief Justice Christine Durham)**

Chief Justice Durham indicated she had nothing more to add to the Management minutes.

##### **POLICY AND PLANNING: (Judge Gary Stott)**

Judge Stott indicated that the Policy and Planning Committee have concluded their study of the Guardianship and Conservatorship issues. Mr. Shea will cover that report in more detail later in the meeting. The rules out for comment were also reviewed during the last Policy and Planning Meeting and they are now on the Council's consent calendar.

The Ad Hoc Committee on Probate and Procedure met for the first time last week. The new committee determined there were numerous issues regarding probate and guardianships to discuss over the next eighteen months.

##### **BAR COMMISSION: (Scott Sabey)**

Scott Sabey indicated the Bar Commission will meet in Vernal this week. A letter was received from Russ D. Vetter commenting on the performance review being done for the Bar.

#### **5. 2<sup>nd</sup> DISTRICT COURT COMMISSIONER: (Judge Parley Baldwin)**

Judge Parley Baldwin reported that the 2<sup>nd</sup> District Court was seeking approval by the Council of the name selected to serve as the new Commissioner since Doug Thomas was appointed as the new 7<sup>th</sup> District Judge. A Committee made up of two judges, Bar members and community members reviewed 36 applications. Three individuals were then interviewed by the 2<sup>nd</sup> District bench and Catherine Conklin was selected as the new Commissioner. Ms. Conklin has broad experience in children and family law and is well respected in the legal community in Ogden. Judge Baldwin asked that the Council accept Ms. Conklin as the new 2<sup>nd</sup> District Commissioner.

**Motion:** Judge Hilder motioned to approve Ms. Catherine Conklin as the 2<sup>nd</sup> District Commissioner. Judge Lyon seconded the motion, the motion passed unanimously.

The Judicial Council discussed the difference between the 36 applicants for the

Commissioner position and the more limited number of judicial applicants received statewide. Chief Justice Durham indicated that in order to reach more people, the Nominating Commissions will return to the old way of advertising judicial openings through the mail instead of being emailed through the Bar. Judge Hilder reported there is a misconception from judges on whether they can provide comment to the selection committee and Governor during a judicial selection process. The Council will ask Mr. Johnson to review the ethical issues surrounding a judge contacting a member of the nominating commission and the Governor.

**6. GUARDIANSHIP AND CONSERVATORSHIP REPORT: (Judge Gary D. Stott, Tim Shea)**

Mr. Shea provided information on the Guardianship and Conservatorship report that the Policy and Planning Committee has been working on. Mr. Shea thanked all those on the Policy and Planning Committee and all those who were involved in creating and gathering information for this report. These recommendations were concluded under the current statute.

Mr. Shea indicated that one of the most important pieces of the proposal will be that the post-appointment reporting requirements that have always been in place will now be enforced. Mr. Shea highlighted the following recommendations from the Committee.

- Repeal the fee for filing an annual accounting
- During the appointment process, better distinguish between the need for a guardian and the need for a conservator
- Exempt the guardian of a minor from reporting requirements under certain circumstances
  - the annual accounting of the minor's estate if the estate is deposited in a court-guarded account, requiring a judge's approval to withdraw funds or if there is no estate; or
  - the annual report on the status of the minor if the appointment is limited guardianship for the purpose of attending school
- Periodically select annual accountings for review
- Establish uniform procedures
  - Valuation of an estate; 'full' and 'informal' accounting
  - Petitioning
  - Hearings
  - Full faith and credit
  - waiver of final accounting
- Develop tools and training for clerks and judges
  - Track cases with CORIS
  - Clerk positions
  - Training for clerks and judges
- Develop tools and training for guardians and conservators
  - Training and testing
  - Forms
  - Internet
  - Manual
- Bring existing cases into compliance

Mr. Shea indicated the next step is for the Rule to be approved for public comment. Mr. Shea questioned whether this is the approach the Council would like to support.

**Motion:** Judge Stott motioned that the Council accept the recommendations on the Guardianship and Conservatorship for approval and implementation. The proposed changes in the Rule are also approved. The motion was seconded and passed unanimously.

**7. JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)**

Mr. Schwermer indicated that four new justice court judges have completed orientation and are eligible for approval by the Judicial Council. Mr. Schwermer reported that the City of Salina has not yet received a letter from the County and that Judge Lesley Scott will be approved subject to receiving that letter.

Mr. Schwermer also indicated that Judge Gerlynn Fenstermaker was not present on the first day of orientation and that she agreed to attend the first day of orientation when it is offered in the future in order to be eligible for certification.

**Motion:** Judge Kwan motioned to approve Judge Vernon Romney, and Judge Aubrey Hoderness and accept Judge Gerlynn Fenstermaker subject to her attending the first day of the next orientation, and Judge Lesley Scott, subject to receiving the letter from the County, as new Justice Court Judges. The motion was seconded and passed unanimously.

**8. FY 2008 BUDGET PLAN ADOPTION: (Daniel J. Becker)**

Mr. Becker indicated that last August the Council determined in their Budget and Planning Session what requests should be made to the legislature, what items should be funded through alternate sources, what items should be deferred, and what items should not be funded. At this time in the year the Council reviews the recommendation's from the Executive Budget Committee to make the final budget determinations.

Mr. Becker reviewed the available funds based on HB 213 funds, existing carry forward money, and fiscal note funds that result in one time funds of \$2,223,400 and ongoing funds of \$3,192,300. Mr. Becker reviewed the one time funding and the ongoing funding that was allocated to the courts this year based on legislatively obligated actions. Mr. Becker discussed the recurring allocations of the last few years. They are:

temporary small claims clerks	\$80,100
2 <sup>nd</sup> language stipend	\$50,000
incentive awards	\$150,000
employee assistance	\$32,000
tuition assistance	\$35,000
TOTAL:	\$347,100

Mr. Becker highlighted that the incentive award amount was increased from \$100,000 to \$150,000. The tuition assistance will raise from \$25,000 to \$35,000. The new allocations for FY 2008 include:

Clerk Pool (11)	\$501,300
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Grant Match	\$50,000
Drug Court Clerks	\$119,100
Digital AV	\$32,000
Self Represented Pilot Program	\$76,600
Executive Development	\$30,400
Small Claims Training	\$2,000
Interpreter/Jury Clerks Training	\$2,000
Law Clerks (2)	\$146,800
Contract Site Assistance	\$23,600
Access Survey	\$15,000
Reserve	\$200,000
TOTAL:	\$1,198,800

With the combination of one time funding, the legislative amount provided, and the ongoing funding, there will be 6 law clerks available. Mr. Becker discussed that the small claims training will possibly become automated. The clerk pool would also include the guardianship and conservatorship clerks to cover that additional workload.

Mr. Becker reviewed the proposed ongoing funding:

Career Ladder	\$300,000
1.5 Clerk for Juvenile Judge	\$71,200
Ed-Judge/Commissioner	\$8,000
Commissioner 9.5%	\$67,500
Law Clerk (1.0)	\$73,400
Deputy Clerks for drug courts	\$89,800
Sr. Judge Benefits	\$14,800
TOTAL:	\$624,700

The District Court Board met last Friday to discuss the placement of time limited law clerks. The statewide ratio of judge to clerk would be 2.67. The Board of District Court Judges has allocated the three permanent law clerk positions approved by the legislature to First, Fifth, and Seventh Districts; the positions in the First and Fifth replace time limited positions. The Board also allocated the three positions approved in the 2008 budget plan to the Third District (1 permanent and 1 time limited position) and the Second District (1 time limited position). Law Clerks have been added through the Council's budget process in the past, but only two have ever been legislatively allocated before this year.

The Council discussed the carry forward money and how that is spent for emergencies, future unanticipated costs, and a potential economic downturn. Mr. Becker indicated that during the fiscal downturn a few years ago, the carry forward money was utilized to cover costs that would have led to further cut backs had the courts not had that money in reserve.

The Council determined this budget matched their priorities and met the needs of the judiciary.

**Motion:** Judge Andrus motioned to approve the proposed budget, and the 6.25% increase for employees. Judge Beacham seconded the motion, the motion passed unanimously.

Mr. Becker indicated that after looking at all funds available, the proposed budget allows a 6.25% increase for all employees who have not begun working at the courts the last 6 months, are not on a career track, and are not in longevity.

**9. PERFORMANCE EVALUATION OF MUNICIPAL COURT JUDGES: (Tim Shea)**

**Motion:** A motion was made to go into executive session to discuss certification issues. The motion was seconded and passed unanimously.

**Motion:** A motion was made to come out of executive session, the motion was seconded and passed unanimously.

**Motion:** Judge Chamberlain motioned to accept all judges for certification. The motion was seconded and passed unanimously.

**10. DIVERSITY REPORT: (Rob Parkes)**

Mr. Becker indicated that based on the recommendations that came out of the Racial and Ethnic Fairness Task Force, a regular update should be given to the Council to report on the progress of diversity in the state courts. Mr. Parkes provided information on the diversity of court staff compared to Utah's population diversity. Mr. Parkes discussed ways that the courts recruit minorities. Mr. Wahl reported that the disparity between the populations served through probation and the court staff working with juveniles, while improving, were particularly concerning considering the number of minority youth in the system.

**11. COMMISSIONER SALARY FY 2008: (Rob Parkes)**

Mr. Parkes indicated that the Management Committee has approved the recommendation of a 9.5% increase for the Court Commissioners which create a 10% difference between Commissioner's and Judges salaries.

**Motion:** Judge Lyon motioned to approve the 9.5% increase for Commissioners, Judge Barrett seconded the motion, the motion passed unanimously.

**12. ETHICS ADVISORY COMMITTEE REPORT: (Brent Johnson)**

Mr. Johnson indicated that the Ethics Advisory Committee is in need of a new attorney representative on the committee. Mr. Johnson asked that Council members make suggestions of attorneys who would have an interest in serving on the committee.

Mr. Johnson reviewed the informal opinions provided in 2006 and so far in 2007. Mr. Johnson indicated that Informal Opinion 07-2 questioning the scope of law practice a referee can engage in is currently being decided. Opinion 07-4 is also being considered which deals with service on the Board of National Alliance on Mental Illness.

Mr. Johnson reported that an informal opinion issued 10 years ago permits judges to communicate with those in judicial appointing positions. The judges can contact nominating commissions and the Governor unsolicited to discuss judicial candidates.

The new Code of Conduct Committee will meet next week. The committee will compare the old code with the new code and existing opinions to determine what changes need to be made.

### **13. ADJOURN**

**Motion:** A motion was made to adjourn the meeting to attend the dedication of the new Gordon R. Hall Courthouse. The motion was seconded and passed unanimously.